

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

FEB 6 2004

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-6115

Dear Congressman Dingell:

Thank you for your letter of February 5, 2004, to Administrator Leavitt concerning perchlorate contamination at Department of Defense facilities, and EPA's policies for handling Congressional inquiries. I appreciate this opportunity to respond to your concerns.

We respect the oversight role of Congress and make every effort to provide timely, thorough and accurate information in response to the numerous information requests we receive. Generally, requests that involve several Regional Offices or other requests from Committees are coordinated by EPA headquarters' Office of Congressional and Intergovernmental Relations (OCIR). This is a longstanding practice that predates Governor Leavitt's appointment and this Administration. In keeping with this practice, several Regional Offices informed OCIR that your staff had called to request information on perchlorate. My staff immediately called Committee staff to obtain clarification on your request, and we asked the Regional Offices to refer any additional calls on this matter to headquarters.

It is extremely important in a large organization to issue precise and clear guidelines for collecting data from various individuals and offices. An ad hoc approach often results in unusable, inconsistent, or unreliable information. While we understood the general nature of your staff's inquiries (based on reports from our Regional Offices), we were unsuccessful in engaging your staff to obtain a better understanding of your needs. Your letter of February 5 has already helped clarify your request, and we have begun working on a response.

Finally, please be assured that there has not been and will not be any attempt to block Committee access to EPA experts. Any requests for meetings or briefings will be facilitated by EPA's Congressional Affairs staff. You or your staff may contact me directly at (202) 564-5200 to further discuss your request.

Sincerely,

Dona DeLeon
Acting Associate Administrator

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

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OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Hilda L. Solis
Ranking Member
Subcommittee on Environment
and Hazardous Materials
U.S. House of Representatives
Washington, DC 20515-6115

Dear Congresswoman Solis:

Thank you for your letter of February 5, 2004, to Administrator Leavitt concerning perchlorate contamination at Department of Defense facilities, and EPA's policies for handling Congressional inquiries. I appreciate this opportunity to respond to your concerns.

We respect the oversight role of Congress and make every effort to provide timely, thorough and accurate information in response to the numerous information requests we receive. Generally, requests that involve several Regional Offices or other requests from Committees are coordinated by EPA headquarters' Office of Congressional and Intergovernmental Relations (OCIR). This is a longstanding practice that predates Governor Leavitt's appointment and this Administration. In keeping with this practice, several Regional Offices informed OCIR that your staff had called to request information on perchlorate. My staff immediately called Committee staff to obtain clarification on your request, and we asked the Regional Offices to refer any additional calls on this matter to headquarters.

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Sincerely,

Dona DeLeon
Acting Associate Administrator

The Honorable Michael R. Leavitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dear Administrator Leavitt:

On April 30, 2003, we wrote former Environmental Protection Agency (EPA) Administrator Whitman about the compelling evidence that perchlorate contamination is a serious and growing problem at Department of Defense (DOD) facilities nationwide, particularly with respect to groundwater contamination. The EPA responded on June 27, 2003, and identified 27 DOD facilities with known perchlorate contamination of the groundwater, of which 14 were Superfund National Priorities List (NPL) facilities.

Our staff has continued to gather information on the scope and extent of perchlorate contamination since information obtained from DOD has revealed contamination at additional facilities that were not identified in the EPA response. Recently the staff contacted officials in Region 8 to inquire about perchlorate contamination at several DOD facilities. After a relatively brief conversation with a toxicologist, it was determined that Mr. Terry Anderson, Director of the Federal Facilities program in Region 8, would have more comprehensive information concerning sites such as Hill Air Force Base, Tooele Army Depot, and Tyco Test Range where perchlorate contamination has been detected. A follow-up call with Mr. Anderson was to be scheduled. When staff called back, however, they were informed that Mr. Anderson had been instructed by an EPA Headquarters official not to speak with Committee staff. Since then, several other Regions have stated that they were instructed not to speak with or provide information to our staff about perchlorate contamination at DOD facilities.

We find it difficult to believe that such a policy of muzzling EPA employees who are paid by the taxpayers is a policy you have personally instituted. If so, it is a complete reversal and departure from the practice followed by the Agency under Administrators Whitman, Browner, Reilly, Thomas, and Ruckelshaus. Committee staff and Members of Congress routinely and frequently communicate with EPA Regional staff who are the most knowledgeable individuals about the facts concerning site cleanup or other issues in the states in their regions. Further, the EPA Regions have congressional affairs officials who are trained and employed to deal with and facilitate the exchange of information to Members of Congress. There is no need to interject another level of Headquarters bureaucracy into the process unless there is a decision on your part to delay and hamper EPA employees from providing information

about the contamination of actual and potential drinking water supplies and the health impacts for the public. With respect to perchlorate contamination, the DOD is following a policy of "don't look – don't find." The EPA is clearly not being aggressive or proactive in using its existing statutory authorities to investigate the scope and extent of contamination or to sample groundwater to detect the presence of perchlorate at DOD facilities where we know perchlorate has been used. Instead, the DOD has for two years been submitting legislation to Congress that would eliminate the ability of states or drinking water utilities to use the authorities of the Resource Conservation and Recovery Act (RCRA) or state Superfund laws to investigate and respond to serious groundwater contamination at the approximate 24,000,000 acres of "operational ranges" in the United States. The proposed legislation would also seriously curtail the EPA's ability to investigate and respond to contamination from perchlorate and other constituents of military munitions in the soil or groundwater at such ranges.

We urge you to act immediately to remove the roadblock stopping Members of Congress from interacting directly with the EPA Regions to obtain information necessary for the performance of our duties. As Ranking Members of the Committee on Energy and Commerce and the Subcommittee on Environment and Hazardous Materials, respectively, we have oversight responsibilities over matters involving RCRA and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) and we will not permit the lack of cooperation by the EPA to deter our efforts.

As we await your response, please provide us with answers to the following questions no later than close of business Tuesday, February 17, 2004:

1. Does this policy preventing direct contact with EPA Regional officials without Headquarters approval apply to all issues or just to information about perchlorate contamination at DOD facilities? If it is only for perchlorate contamination, what is the basis for singling out perchlorate contamination at DOD facilities? Does the new policy apply to all Members of Congress or just Democratic Members? Who is the individual who instructed the Regional officials not to discuss perchlorate contamination with Congressional staff?
2. When you were the Governor of Utah, did you or your staff need to obtain approval from EPA Headquarters before you could talk to Region 8 officials about perchlorate contamination or any other matter? If not, why are Members of Congress from the EPA's principal authorizing Committee being subjected to different treatment?
3. Please identify each DOD facility where EPA has knowledge that, or has reason to believe that, a constituent of military munitions, including perchlorate, TNT, RDX, HMX, or White Phosphorus has been detected or discovered? For each such facility identify the constituent that has been detected, the levels of contamination discovered, the date the constituent was detected, the media where it was detected, the remedial action, if any, that has been taken and whether the facility is listed on the Superfund NPL. Further, please indicate whether the constituent of military munitions has been detected in the groundwater under an operational range. In addition, indicate whether private or public drinking water wells have been closed, temporarily or otherwise, by contamination from a constituent of military munitions and if so provide the location of

the well.

4. Because the DOD legislative proposals for both RCRA and CERCLA use the term "operational range," we asked the EPA to identify all of the operational ranges that are covered by the amendments and list the location of each such operational range and the date it was last used for training activities. The EPA was unable to provide this critical information in its June 2003 response. Seven additional months have passed and we renew our request for this information. Also, please identify each operational range that is currently part of a Superfund NPL facility and provide the acreage of each such range.
5. The name and location of DOD facilities where perchlorate contamination has been discovered was provided in EPA's response of June 27, 2003, to our letter of April 30, 2003. The Agency, however, was unable at that time to provide the dates when the perchlorate contamination was first detected but stated that the "date of detects will be coming as soon as possible." More than six months has elapsed and no such information has been forthcoming. Please provide the date of detection for the perchlorate contamination at each DOD facility.
6. Is the EPA aware of any states that are seeking to take samples at DOD facilities for perchlorate or requesting that DOD take such samples? If so, please identify the state and facility.
7. Is the EPA seeking to take samples itself at any DOD facility or asking DOD to sample at any facility for perchlorate or other constituents of military munitions? If so, please identify the facility and the circumstances.
8. Is the EPA aware of any perchlorate contamination or contamination from other constituents of military munitions in public or private drinking water wells where a DOD facility is a possible or likely source of the contamination? If so, please identify each such circumstance.
9. Does the EPA believe that McChord Air Force Base or Ft. Lewis, Washington, are the possible or likely sources of the perchlorate contamination detected at the Lake View Water District in Pierce County, Washington? Has the EPA submitted information requests or data surveys to McChord AFB or Ft. Lewis, Washington, in an attempt to identify the source and, if so, have McChord AFB and Ft. Lewis fully complied with and answered the information requests or data surveys?

Thank you for your attention to these matters. If you have any questions, please call us, or have your staff contact Dick Frandsen, Minority Senior Counsel, at (202) 225-3641.

cc The Honorable W. J. "Billy" Tauzin, Chairman
 Committee on Energy and Commerce

 The Honorable Paul E. Gillmor, Chairman
 Subcommittee on Environment and Hazardous Materials

 Regional Administrators, Environmental Protection Agency